

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7600

Investigation into: (1) whether Entergy Nuclear)
Vermont Yankee, LLC, and Entergy Nuclear Operations,)
Inc. (collectively, "Entergy VY"), should be required to)
cease operations at the Vermont Yankee Nuclear Power)
Station, or take other ameliorative actions, pending)
completion of repairs to stop releases of radionuclides,)
radioactive materials, and, potentially, other non-)
radioactive materials into the environment; (2) whether)
good cause exists to modify or revoke the 30 V.S.A.)
§ 231 Certificate of Public Good issued to Entergy VY;)
and (3) whether any penalties should be imposed on)
Entergy VY for any identified violations of Vermont)
statutes or Board orders related to the releases)

Order entered: 7/14/2010

PROCEDURAL ORDER RE:
NEC's MOTION TO ALTER THE SCHEDULE
AND
ENTERGY VY's ROOT CAUSE EVALUATION REPORT

I. INTRODUCTION

In this Order, we deal with two issues: (1) we deny a motion¹ filed by the New England Coalition, Inc. ("NEC") to alter the schedule in this docket in order to obtain additional testimony and discovery from Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (jointly, "Entergy VY" or the "Company"); and (2) we direct Entergy VY to file direct

1. This motion was included in a pleading entitled: *The New England Coalition, Inc.'s Supplemental Response to IBEW's Motion to Close Docket No. 7600 and Motion to Alter the Schedule* (hereinafter the "Motion to Alter").

testimony concerning its Root Cause Evaluation Report dated June 16, 2010, and provide other parties an opportunity to provide additional testimony in response to Entergy VY's filing.

A. The Motion to Alter

On June 4, 2010, NEC filed a motion to alter the existing procedural schedule in this docket. NEC requested that the Public Service Board ("Board") require Entergy VY to file supplemental testimony concerning "newly reported leaks and contaminations" at the Vermont Yankee Nuclear Power Station (the "VY Station").² These "leaks" had been the subject of news stories in late May of this year.³ In addition to seeking this supplemental testimony from Entergy VY, NEC requested leave to conduct discovery upon this new testimony, as well as an opportunity to file rebuttal testimony as warranted.⁴ NEC asserted that this testimony and discovery "is necessary for the Board and the parties to fully understand and provide testimony and arguments regarding the ongoing leak issues at VY"⁵ According to NEC, "the new leak also indicates that Entergy VY has not fully addressed the current issues related to the deterioration of underground piping and ongoing contamination of groundwater that are the subject of this docket."⁶

On June 10, 2010, the Board set a deadline of June 21, 2010, for parties to file responses to the Motion to Alter. The following parties submitted responses: Entergy VY, the Department of Public Service ("Department"), Conservation Law Foundation ("CLF"), and the International Brotherhood of Electrical Workers, Local 300 ("IBEW").⁷ No party supports altering the

2. Motion to Alter at 1-2. With respect to the newly reported leaks, NEC specifically requested additional testimony be ordered from Energy VY concerning "sampling, analysis, origin, extent, and disposition of the strontium-90, other accompanying radio nuclides, and any other water-borne contaminants, found at the VY station and surrounding environs." *Id.* at 3.

3. These newspaper articles were attached to the Motion to Alter.

4. Motion to Alter at 4.

5. *Id.* at 2.

6. *Id.*

7. IBEW filed its response to the Motion to Alter on June 25, 2010, which was four days after the deadline established by the Board. For this reason, IBEW also filed a motion on June 25, 2010, seeking leave to file out of

existing schedule to accommodate NEC's request for additional testimony and discovery from Entergy VY, though both CLF and the Department have indicated that it would be appropriate for Entergy VY to file "[a]ny new information regarding the leaks . . . to the parties and to the Public Service Board through supplemental testimony submitted no later than the deadline for other parties to submit testimony in this proceeding."⁸ The Department asserts that Entergy VY has already provided information on the leaks in response to discovery requests from the Vermont Agency of Natural Resources. CLF also suggests that the parties should be permitted to conduct discovery upon and to respond to any such supplemental testimony from the Company, provided this does not result in any delays in the existing schedule.

In opposition to the Motion to Alter, Entergy VY contends that the additional discovery sought by NEC "is inappropriate for this stage of the docket." The Company argues that this initial phase of the investigation "is intended to provide a factual background for the parties to brief whether the Board's state-law jurisdiction with respect to the tritium leakage is preempted by the jurisdiction of the Nuclear Regulatory Commission ("NRC")."⁹ Entergy VY does not otherwise address whether it would be appropriate for the Company to file the supplemental testimony NEC has requested.

In our procedural order of March 18, 2010, we defined the scope of the first phase of this docket¹⁰ and required Energy VY to file direct testimony regarding certain topics.¹¹ In issuing

time its response to the Motion to Alter. No party has opposed IBEW's motion and it is granted.

8. *Letter from Sandra Levine, Esq., on behalf of CLF, to Susan M. Hudson*, dated June 15, 2010. See also *Letter from Sarah Hofman, Esq., on behalf of the Department, to Susan M. Hudson*, dated June 21, 2010 ("DPS Response"). The filing deadline suggested by CLF and the Department was July 2, 2010, which has since passed.

9. *Response of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., in Opposition to the New England Coalition, Inc.'s Motion to Alter the Schedule*, dated June 21, 2010, at 2.

10. Docket 7600, Order of 3/18/10 at 1 ("The initial stage of this investigation will focus on . . . whether we can take action and what action we should take in response to the on-going releases of certain contaminants.")

11. The procedural order specifically stated:

Thus, we are establishing a schedule that requires Entergy VY to submit, within two weeks, sworn affidavits in the form of testimony explaining the following:

- What has happened and is happening now with respect to the releases?

that procedural order, it was our intent to move this matter beyond "generalized information and unspecific concerns" by providing a focused structure of inquiry into a topic of pressing public interest.¹² To that end, we required Energy VY to file testimony explaining the location, nature and extent of the releases that were known to have happened and to be on-going when our procedural order was issued on March 18, 2010.

We recognize that our Order opening this investigation did not specify particular leaks as the focus of the inquiry. Thus, a reasonable argument may be made that any release that has been reported to have occurred at the VY Station since we opened this investigation (or that may yet occur and be disclosed) could be deemed relevant to the inquiry underway in this docket. However, this line of reasoning conceivably could require the parties to invest their time, effort and resources in responding to a moving target or to leaks that did not have significant potential impacts upon issues within our jurisdiction. Under the circumstances of this case, the public interest will be best served by continuing to focus our investigation on the releases that prompted us to first open this docket, which have been detected in ground water monitoring wells. Though this targeted approach to developing the evidentiary record in the initial phase of this docket admittedly is limiting, it will focus the investigation on the releases that have been alleged to have the potential to impact matters within our jurisdiction and which have been suggested to be a basis for granting further relief. For these reasons, we deny the Motion to Alter.¹³

-
- Where are the discharges located (to the extent that Entergy VY knows)?
 - What is being released (including any contaminants), in what amounts, and where?
 - What steps is Entergy VY taking to find and fix the leaks?
 - What are the impacts of the release from an environmental, land use, public health, reliability, and economic standpoint, including any potential increase in the cost of decommissioning?

Docket 7600, Order of 3/18/10 at 3.

12. *Id.* at 2.

13. In reaching this determination, we note that both the Department and Entergy VY have identified a discovery response from the Company that was served on June 15, 2010, and that appears to provide "information on the leak that was identified on May 28, 2010." *Letter from John Marshall, Esq., on behalf of Entergy VY, to Susan Hudson*, dated July 1, 2010, at 2. See also DPS Letter at 1. Presumably NEC had the benefit of this information when it filed its direct testimony in this docket on July 2, 2010, and will be able to make use of this information, as warranted, during the technical hearing to come.

B. The Root Cause Evaluation Report

On June 22, 2010, Entergy VY filed a transmittal letter¹⁴ with the Board to which was attached a document identified as the "Root Cause Analysis Report for Condition Report CR-VTY-2010-00069."¹⁵ The filing gave no indication of how Energy VY envisioned that the Report would be used or whether the Company intended that it be introduced into the evidentiary record in this proceeding.

This document on its face appears to represent the Company's analysis of the causes of the releases at issue in this docket. We, therefore, consider it relevant to the inquiry before us and direct Entergy VY to file the Root Cause Report as direct testimony or an exhibit, sponsored by a witness who is competent and available to appear and answer questions at the technical hearing in this docket. Entergy VY shall specify the sponsoring witness and file any supplemental direct testimony that Entergy VY determines is necessary to support the Root Cause Report, by July 28, 2010. Any party wishing to serve discovery upon the Company related to the Root Cause Report shall do so by August 11, 2010, with responses due 10 calendar-days later.

The following is the schedule for the next steps in this proceeding.

July 16, 2010	Entergy VY serves discovery requests upon Parties' testimony. Entergy VY's discovery period shall extend for 15 calendar-days on a rolling basis with 10 calendar-day responses.
July 28, 2010	Entergy VY files Root Cause Report and supporting testimony.
August 11, 2010	Parties file discovery on Root Cause Report and testimony.
August 20, 2010	All parties file direct briefs re: scope of Board's jurisdiction to take action in response to the releases of the contaminants at issue in this

14. *Letter from John Marshall, Esq., on behalf of Entergy VY, to Susan Hudson*, dated June 22, 2010.

15. Hereinafter the "Root Cause Report."

	docket.
August 23, 2010	Entergy VY responds to discovery on Root Cause Report.
August 30, 2010	All parties file reply briefs re: scope of Board's jurisdiction to take action in response to the releases of the contaminants at issue in this docket.
September 7, 2010	Parties may file supplemental testimony responding to Root Cause Report.
September 21, 2010	Parties file discovery on September 7 testimony.
October 1, 2010	Responses to September 21 discovery requests.

SO ORDERED.

Dated at Montpelier, Vermont, this 14th day of July, 2010.

<u>s/ James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/ David C. Coen</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: July 14, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)